



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

v. *McDonnell*, 14 Wis. 553. Mere private instructions will not bind third parties where they have acted in good faith, relying upon the apparent general authority. They have the right to assume that the agent has authority to do whatever is right and proper in such cases. *Mallory Com. Co. v. Elwood*, 95 N. W. Rep. 176; *Robbins v. Magee*, 76 Ind. 381; *Allis v. Voigt*, 90 Mich. 125, 51 N. W. Rep. 190; *Harrison v. Kansas City*, 50 Mo. App. 332; *Russ v. Telfener*, 57 Fed. Rep. 973. In case the fact of agency or the extent of authority is in dispute the person relying upon it has the burden of establishing the same. *Powell v. Wade*, 109 Ala. 95, 19 South. Rep. 500, 55 Am. St. Rep. 915; *McAtee v. Perrine*, 48 Ill. App. 548; *Vawter v. Baker*, 23 Ind. 63; *Pratt v. Beaupre*, 13 Minn. 187; *Savings Society v. Savings Bank*, 36 Pa. St. 498, 78 Am. Dec. 390.

PUBLIC OFFICE—VACANCY IN.—Relator was elected to membership in the Board of Education but failed to qualify within the time required by law. Acting under the authority given by Sec. 5, c. 45, Code 1899 ("Vacancies in the office of school trustees, shall be filled by the Board of Education, for the unexpired term; and in the Board of Education by the county superintendent of free schools, for the unexpired term"), the superintendent of free schools for the county then appointed the relator to fill the office during the term for which he had been elected. The respondent held the office by appointment to fill a previous unexpired term and, upon demand by the relator, refused to surrender office. Respondent denied that any vacancy existed at the time of the appointment and based his denial upon the Code provision that "The term of every officer shall continue (unless the office be vacated by death, resignation, removal from office or otherwise) until his successor is elected or appointed and qualified." Sec. 2, c. 7, Code 1899. Mandamus being brought to obtain admission to the office, the court *Held*, that the occupancy of the office by the holding over of respondent did not preclude the existence of a vacancy as a basis for the exercise of the appointing power under Sec. 5, c. 45, Code 1899. *Kline v. McKelvey* (1905), — W. Va. —, 49 S. E. Rep. 896.

Upon practically the same state of facts the Supreme Court of Virginia reached a contrary conclusion in *Chaddock v. Burke* (1905), — Va. —, 49 S. E. Rep. 976. The latter decision is supported by the great weight of authority which upholds the view that so long as an office is occupied by one who has a legal right to hold it and to exercise the powers and perform the functions pertaining thereto, there is no vacancy, and that the word "vacancies" when used in such statutes has reference to vacancies caused by death, resignation, removal and the like, and does not contemplate the filling of an office for the ensuing term on the expiration of the preceding term when the incumbent holds over until his successor has qualified. *MECHEM, PUBLIC OFFICERS*, § 128; *Tappan v. Gray*, 9 Paige (N. Y.), 507; *Commonwealth v. Hanly*, 9 Penn. St. 513; *State v. Howe*, 25 Ohio St. 588; *Smoot v. Somerville*, 59 Md. 84; *The People v. Tilton*, 37 Cal. 614; *The People ex rel. v. Osborne*, 7 Colo. 605.

WILLS—ATTESTATION—"IN PRESENCE OF TESTATOR."—Where the weight of testimony showed a will to have been subscribed by the witnesses in a room adjoining that in which decedent lay, but the subscribing witness might pos-